

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of California-American Water
Company (U210W) for Approval of the
Monterey Peninsula Water Supply Project and
Authorization to Recover All Present and Future
Costs in Rates.

A.12-04-019
(Filed April 23, 2012)

**COMMENTS OF THE SETTLING PARTIES ON PHASE 2 SCHEDULE IN
RESPONSE TO THE AUGUST 21, 2014 RULING OF ALJ MINKIN**

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September 15, 2014

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COMMENTS OF THE SETTLING PARTIES ON PHASE 2 SCHEDULE

Pursuant to Administrative Law Judge Minkin’s August 21, 2014 Ruling Updating Schedule (“August 2014 ALJ Ruling”), California-American Water Company (“California American Water”), Citizens for Public Water, City of Pacific Grove, County of Monterey (the “County”), LandWatch Monterey County (“LandWatch”), Monterey County Water Resources Agency (“MCWRA”), Monterey Peninsula Regional Water Authority (“MPRWA”), Monterey Peninsula Water Management District (“MPWMD”), Monterey Regional Water Pollution Control Agency (“MRWPCA”), and Surfrider Foundation (“Surfrider”) (collectively, the “Parties”) submit these Comments on the Phase 2 Schedule.¹ As detailed here, the Parties support a change in the existing GWR schedule as set forth herein.

I. BACKGROUND

In the August 2014 ALJ Ruling, ALJ Minkin revised the schedule for Phase 1 of this proceeding by adding four to six months² to the existing schedule for the Monterey Peninsula Water Supply Project (“MPWSP”) CPCN and CEQA Tracks, which are the primary focus of this proceeding. Such change was prompted by the Commission Energy Division’s

¹ The parties to these Comments include most of the parties to the July 31, 2013 Settlement Agreement. Some parties decided to not join with the rest of the Settling Parties in these Comments but have indicated that they do not oppose the requested schedule proposed in these Comments.

² Four months were added to the DEIR timeline (Q3 2014 to January 2015) and six months were added to the FEIR/CPCN timeline (Q1 2015 to Q3 2015).

request for the extensions due to delays in preparing the Draft Environmental Impact Report (“DEIR”) for the MPWSP, which made it impossible for the Energy Division to complete the DEIR by the 3rd Quarter of 2014. As a result, the release of the Commission DEIR for the MPWSP is now scheduled for no later than January 30, 2015, the release of the Final EIR is now scheduled for no later than July 30, 2015, and final Commission Action on Phase 1 is delayed until the 3rd Quarter of 2015.

The August 2014 ALJ Ruling represents the second time the Commission has extended the Phase 1 schedule since the Amended Scoping Memo and Assigned Commissioner Ruling (“Amended Scoping Memo”) was issued on September 25, 2013. The Commission previously extended the MPWSP Schedule for Phase 1 by seven months in the January 27, 2014 Ruling Setting Forth Updated Schedule and Addressing Other Matters (“January 2014 ALJ Ruling”). It did so after consulting with Energy Division Staff working on the DEIR who reported that the City of Marina had not yet provided clearance for the drilling of additional bore holes at the Cemex site. Overall, the Phase 1 schedule has now been extended close to a year. For example, the Phase 1 DEIR release has moved from February 28, 2014 in the Scoping Ruling to January 30, 2015 in the ALJ Ruling and the Phase 1 FEIR has slipped from June 17, 2014 to no later than July 30, 2015 (over 13 months).

In the August 2014 ALJ Ruling, ALJ Minkin indicated that “it appears that the anticipated schedule for Phase 2 of this proceeding should be modified.” As noted in that ALJ Ruling, the Phase 2 schedule currently remains the same as that set forth in the Amended Scoping Ruling notwithstanding the intervening extension in the Phase 1 schedule in January 2014. As detailed in the next section of these Comments, the Parties submit that it is necessary to consider and adopt a revised Phase 2 schedule concerning GWR in light of both extensions already made in the Phase 1 schedule such that the original intervals set forth in the Amended Scoping Ruling, which were based on the closely related preparation of the environmental documents for the MPWSP and GWR, are restored.

II. COMMENTS

The Parties support altering the Phase 2 schedule so it is commensurate with the cumulative eleven month postponement reflected in the January 2014 ALJ Ruling and the August 2014 ALJ Ruling. Such alteration would provide time necessary for proponents of the GWR project to complete the milestones identified in Section 4.2 of the July 31, 2012 Settlement Agreement prior to the testimony date. Under the Settlement Agreement, testimony is required to show that the GWR project criteria have been met so the Commission may then decide whether to authorize California American Water to build, as part of the MPWSP, a smaller desalination plant to accommodate the Water Purchase Agreement for the GWR product water. In the Settlement Agreement, this decision is referred to as “the GWR Decision”. Such milestones are in many instances closely interrelated with the release of the Commission DEIR on the MPWSP, now extended by 11 months.

The most relevant example of the interrelationship between the MPWSP schedule and the GWR schedule is between the EIRs that must be prepared for each project. As part of the evidence required in testimony presently due in December of this year, the GWR Project proponents must show that MRWPCA has approved the GWR Project pursuant to a certified Final EIR and must further show that no CEQA suit has been filed within 30 days of filing a Notice of Determination, or if a CEQA suit is filed, no stay of the GWR project has been granted.³ To meet this milestone, MRWPCA must first complete the DEIR for the GWR Project and go through all steps necessary for CEQA review.

To prepare the DEIR for the GWR Project, the Commission DEIR for the MPWSP must have been released in advance such that the results of that DEIR may be considered in the GWR Project DEIR. There is substantial overlap between the analyses in the two EIRs. First, the Project Variant in the EIR for the MPWSP corresponds to the cumulative impacts scenario in the GWR EIR. The EIR for the MPWSP will present an analysis looking at the “Variant” scenario where the smaller desalination plant is built coupled with the purchase of

³ Settlement Agreement, Sec. 4.2(a)(i).

GWR product water. Such analysis of the combined effects of the GWR Project and the smaller desalination plant will then be used in the GWR Project's analysis of cumulative impacts. Second, both EIRs will need to evaluate environmental impacts of the same set of improvements to California American Water's distribution system to deliver water in adequate quantities and pressures to customers in the system. Again, the consultants preparing the GWR EIR are relying on the analysis in the Commission EIR for the MPWSP of the distribution system improvements. On both of these points, despite the fact that both project teams are exchanging technical information, it will be necessary for the published version of the Commission DEIR for the MPWSP to be provided to the GWR project consultants before the GWR DEIR and FEIR can be completed.

In the original schedule set forth in the Amended Scoping Ruling dated September 15, 2013, the DEIR was to be released on February 28, 2014 and the first step in the Phase 2 proceeding -- submission of testimony -- was scheduled for ten months later, in December 2014. During that ten month period, MRWPCA would need to incorporate data from the DEIR for the MPWSP into its own environmental analyses, issue its own DEIR and follow all necessary CEQA steps to get to final approval. When the schedule was changed in January 2014 for Phase 1 of the MPWSP Project, but not the GWR Phase 2, the MPWSP DEIR publication slipped to the 3rd Quarter 2014 but was still ahead of the GWR testimony date. As time passed under that schedule, however, it became increasingly clear to the Parties that an extension would be needed for the Phase 2 schedule.⁴ Now, with the latest extension in the August 2014 Ruling, without a change in the GWR schedule, the Commission DEIR for the MPWSP would not be published until months after GWR testimony was due, clearly making the existing GWR schedule impossible and illogical.

With the two extensions on the MPWSP Project schedule and the demonstrated

⁴ The January 2014 Ruling did not provide parties with an opportunity to comment on the need to change the GWR schedule. In perfect hindsight, the Parties should have nonetheless raised the need for the GWR schedule to remain consistent with the MPWSP schedule for the reasons here stated.

interrelationship between the schedules, the Parties respectfully submit that the GWR Phase Schedule should revert back to a schedule containing time periods between events comparable to those contained in the Amended Scoping Ruling and propose the following new dates:

- (i) **Testimony of Interested Parties** – November 2015
- (ii) **Settlement Discussions** – commencing in December 2015
- (iii) **Concurrent Rebuttal Testimony** – December 2015
- (iv) **Evidentiary Hearings** – January 2016
- (v) **Briefing** – February 2016
- (vi) **Proposed Decision** – May 2016
- (vii) **Final GWR Decision** – June 2016

The Parties submit this proposed schedule will provide a reasonable schedule and provide GWR proponents with a reasonable opportunity to develop the GWR Project as a meaningful alternative to the version of the MPWSP project containing a larger desalination plant, and potentially allow for use of GWR as a component in the critical water supply portfolio for the Monterey Peninsula. Even with this extension in the schedule, the GWR Project is projected to be in operation by the end of 2017, ahead of the MPWSP, and the GWR Decision will still be made prior to commencement of construction of the MPWSP. Overall, making schedule changes now that continue the viability of the GWR Project likely will result in the delivery of new water sources to the Monterey peninsula more quickly both because the GWR Project will begin operations earlier than the MPWSP and because the smaller MPWSP project can be built more quickly than a larger plant. According to the most recent schedule, California American Water will likely need the 2018-2019 winter season to install the last group of slant intake wells if the larger desalination plant is constructed. That final group of wells, however, would not be needed for the smaller plants that would be coupled with GWR. This means the

larger desal plant would probably not run at full production capacity until the 2nd quarter of 2019. If the GWR project can meet the above schedule, and meets other criteria under the Settlement Agreement, the desal plant would need fewer intake wells and could likely be entirely on-line by the 3rd quarter of 2018.

In addition, to keep the ALJ and the Commission apprised of the progress of the GWR Project, if the Commission desires, the Parties are willing to add to the proposed schedule periodic updates prior to the November 2015 testimony on key elements of the GWR Project, *e.g.*, in December 2014 and June 2015. Such reports could address the environmental review process as well as provide updates on source water arrangements for GWR and other key elements of the overall GWR project. Such reports would provide the Commission with assurances that GWR remains a viable water source for California American Water through a Water Purchase Agreement.

III. CONCLUSION

For the reasons stated, the Parties respectfully request the Commission to modify the Phase 2 Schedule as set forth in these Comments.

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